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CASES ON UNDUE INFLUENCE

CLASS 1: ACTUAL UNDUE INFLUENCE

Williams v Bailey (1866) LR 1 HL 200

A son forged his father's signature on promissory notes and gave them to their bankers. At a meeting of all the parties at the bank, one of the bankers said to the father: "If the bills are yours we are all right; if they are not, we have only one course to pursue; we cannot be parties to compounding a felony." The bank's solicitor said it was a serious matter and the father's own solicitor added, "a case of transportation for life." After further discussion as to the son's financial liability the bank's solicitor said that they could only look to the father. The father then agreed to make an equitable mortgage to the bank in consideration of the return of the promissory notes. The father succeeded in action for cancellation of the agreement.

It was held by Lord Westbury that the security given for the debt of the son by the father under such circumstances, was not the security of a man who acted with that freedom and power of deliberation that must be considered as necessary to validate a contract to give security for the debt of another.

CLASS 2: PRESUMED UNDUE INFLUENCE

CLASS 2A

Allcard v Skinner (1887)

In 1867 an unmarried woman aged 27 sought a clergyman as a confessor. The following year she became an associate of the sisterhood of which he was spiritual director and in 1871 she was admitted a full member, taking vows of poverty, chastity and obedience. Without independent advice, she made gifts of money and stock to the mother superior on behalf of the sisterhood. She left the sisterhood in 1879 and in 1884 claimed the return of the stock. Proceedings to recover the stock were commenced in 1885.

It was held by the Court of Appeal that although the plaintiff's gifts were voidable because of undue influence brought to bear upon the plaintiff through the training she had received, she was disentitled to recover because of her conduct and the delay.

CLASS 2B

Lloyd's Bank v Bundy [1975] QB 326

A guarantee was given to the bank by an elderly farmer, a customer of the bank, for his son's debts. The guarantee was secured by a mortgage of Bundy's house in favour of the bank. An assistant manager of the bank, with the son, later told the father that they would only continue to support the son's company if he increased the guarantee and charge. The father did so, the assistant manager appreciating that the father relied on him implicitly to advise him about the transaction. The Court of Appeal set aside the guarantee and charge.

Lord Denning held that the relationship between the bank and the father was one of trust and confidence. The bank knew that the father relied on them implicitly to advise him about the transaction. The father trusted the bank. This gave the bank much influence on the father. Yet the bank failed in that trust. They allowed the father to charge the house to his ruin. There was also a conflict of interest between the bank and the father, yet the bank did not realise it, nor did they suggest that the father should get independent advice. If the father had gone to his solicitor or any man of business there is no doubt

that they would have advised him not to enter the transaction as the house was his sole asset and the son's company was in a dangerous state.

Sir Eric Sachs made it clear that, in ordinary circumstances, a bank does not incur the duty consequent upon a special relationship where it obtains a guarantee from a customer. But once it is possible for a bank to be under that duty, it is, as in the present case, simply a question for "meticulous examination" of the particular facts to see whether that duty has arisen. On the special facts here it did arise and had been broken.

National Westminster Bank v Morgan [1985] 1 All ER 821

A husband and wife owned a home jointly. The husband was unable to meet his mortgage commitments and the building society threatened to seek possession for unpaid debts. The husband made refinancing arrangements with the bank secured by a mortgage in favour of the bank over the matrimonial home. The bank manager called at the home to get the wife to execute the charge. She did not wish the charge to cover her husband's business liabilities. The bank manager assured her, in good faith but incorrectly, that it did not. It was, in fact, unlimited in extent and could, therefore, extend to all the husband's liabilities to the bank, though it was the bank's intention to confine it to the amount needed to refinance the mortgage. The wife had not received independent legal advice before executing the mortgage. The husband and wife fell into arrears with their payments, and the bank obtained an order for possession of the home. Shortly afterwards, the husband died without owing the bank any business debts. The wife argued that the bank manager exercised undue influence over her and that a special relationship existed between her and the bank which required it to ensure that she received independent legal advice before entering into a further mortgage. She also sought to rely upon *Lloyd's Bank v Bundy*.

Lord Scarman came to the following conclusions:

1. A transaction would not be set aside on the grounds of undue influence unless it could be shown that it was manifestly disadvantageous to the party alleged to be influenced.
2. The basic principle was not a vague public policy (as formulated in *Allcard v Skinner*), but the prevention of victimisation of one party by another.
3. The transaction in the instant case was not unfair to the wife.
4. Although the doctrine of undue influence could extend to commercial transactions, including those between banker and customer, it could not be maintained on the present facts that the relationship was one in which the banker had a dominating influence.
5. The bank, therefore, was not under a duty to ensure that the wife had independent advice.

MANIFEST DISADVANTAGE

National Westminster Bank v Morgan [1985]

See point 1 above. Lord Scarman stated:

"A meticulous examination of the facts of the present case reveals that [the bank] never 'crossed the line'. Nor was the transaction unfair to the wife. The bank was, therefore, under no duty to ensure that she had independent advice. It was an ordinary banking transaction whereby the wife sought to save her home; and she obtained an honest and truthful explanation of the bank's intention which, notwithstanding the terms of the mortgage deed which in the circumstances the trial judge was right to dismiss as 'essentially theoretical', was correct; for no one had suggested that … the bank sought to make the wife liable, or to make her home the security, for any debt of her husband other than the loan and interest necessary to save the house from being taken away from them in discharge of their indebtedness to the building society."

BCCI v Aboody [1989] 2 WLR 759

A husband and wife owned a family company and the company's liabilities to its bank were secured, among other things, by charges of the wife's house. The bank sought to enforce the securities and the wife pleaded actual undue influence by the husband. Although the judge found that such influence had been established, he refused to set aside the charges as it had not been proved that they were manifestly disadvantageous to the wife (a point since overruled by the House of Lords in *CIBC Mortgages v Pitt* [1993]).

It was held by the Court of Appeal that manifest disadvantage for the purposes of the doctrine of undue influence had to be a disadvantage which was obvious as such to any independent and reasonable person who considered the transaction at the time with knowledge of all the relevant facts. The fact that the complaining party had been deprived of the power of choice (eg because his will had been overborne through the failure to draw his attention to the risks involved) was not of itself a manifest disadvantage rendering the transaction unconscionable. Furthermore, since the giving of a guarantee or charge always involved the risk that the guarantee might be called in or the charge enforced, the question whether the assumption of such a risk was manifestly disadvantageous to the giver of the guarantee or charge depended on balancing the seriousness of the risk of enforcement to the giver, in practical terms, against the benefits gained by the giver in accepting the risk.

There were no grounds for disagreeing with the judge's conclusion that on balance a manifest disadvantage had not been shown by the wife in respect of any of the six transactions, since although there were substantial potential liabilities and the family home was at risk as a result of the transactions, that was counterbalanced by the fact that the loans gave the company a reasonably good chance of surviving, in which case the potential benefits to the wife would have been substantial. Moreover, the evidence established that on balance the wife would have entered into the transactions in any event and accordingly it would not be right to grant her equitable relief as against the bank. The wife's appeal was therefore dismissed.

Barclays Bank v Coleman (2000) The Times, January 5.

The Court of Appeal held that manifest disadvantage, in the sense of clear and obvious disadvantage, remained a necessary ingredient of a wife's challenge on the ground of presumed undue influence of her husband to the validity of a bank's charge over the matrimonial home. But the House of Lords had signalled that it might not continue to be an essential ingredient indefinitely. See photocopy of Law Report.

UNDUE INFLUENCE AND THIRD PARTIES

Barclays Bank v O'Brien [1993] 4 All ER 417

The husband was a shareholder in a company and arranged an overdraft facility of £135,000 for the company. The husband's liability to the bank was to be secured by a second charge over the matrimonial home, jointly owned by the husband and his wife. The husband persuaded the wife to sign the security documents by misrepresenting the situation, saying the facility was short-term and the charge was limited to £60,000. When the company's debts increased, the bank brought proceedings against the O'Briens to enforce the guarantee.

The judge gave judgment for the bank, finding that (1) the husband had not unduly influenced the wife and (2) that the husband had misrepresented the effect of the charge but that the bank was not responsible for that misrepresentation. The Court of Appeal held that the bank was under a duty, which it had not satisfied, to take reasonable steps to ensure that the wife had an adequate understanding of the transaction so that it was not enforceable

against her except to the extent of £60,000. The bank's appeal to the House of Lords was dismissed, and they set aside the charge.

The House of Lords held that a wife who stood surety for her husband's debt and who had been induced by undue influence, misrepresentation or similar wrong had a right to have the transaction set aside if the third party (in this case the bank) had actual or constructive knowledge. Unless reasonable steps were taken to ascertain a) whether the transaction was of financial advantage to the wife, and b) if there were reasons to suspect that the debtor had committed a legal or equitable wrong which had induced the wife into the transaction, then there would be, at least, constructive knowledge. The bank, having failed to take any such steps to verify the situation, had constructive knowledge of the husband's wrongful misrepresentation. The wife was entitled to have the charge set aside.

The House also extended the principles applicable to husband and wife to (1) all cases where there is an emotional relationship between the cohabitees (whether homosexual or heterosexual), provided that the creditor is aware that the surety is cohabiting with the principal debtor; and (2) to other relationships (for example, parent and child) in which the creditor is aware that the surety reposes trust and confidence in relation to his financial affairs.

CIBC Mortgages v Pitt [1993] 4 All ER 433

A husband wanted to borrow money on the matrimonial home to buy stock market shares. The wife was unhappy about this but eventually agreed under pressure. They jointly applied for a loan, stating that the purpose of the loan was to pay off the existing mortgage and purchase a holiday home. The wife received no independent advice and no one suggested to her that she should. She did not read the documents before signing them and did not know the amount being borrowed. When the stock market collapsed the husband defaulted on the loan repayments and the plaintiff applied for an order for possession of the house.

The judge held that the wife had been induced to sign by the husband's misrepresentation, fraud and duress but, since he had not acted as the bank's agent and this was not a case of the wife standing surety for the husband's debt but a loan jointly to husband and wife, the wife's claim failed. This decision was upheld on appeal.

The House of Lords held that while a claimant who could prove actual undue influence was entitled to have the challenged transaction set aside, the plaintiffs would only be affected if it could be established that they had actual or implied notice of the undue influence. In this case there was nothing to indicate that this was anything other than a normal loan to husband and wife's joint benefit. According to Lord Browne-Wilkinson, what distinguishes the case of the joint advance from the surety case is that, in the latter, there is the increased risk of undue influence having been exercised because, at least on its face, the guarantee by a wife of her husband's debts is not for her financial benefit. It is the combination of these two factors that puts the creditor on inquiry.

REBUTTING THE PRESUMPTION

Inche Noriah v Bin Omar [1928] All ER 189

The appellant brought an action against the respondent claiming that a deed of gift made between the parties should be set aside on the ground that the relationship between the parties at the time when the deed was executed was such as to raise a presumption of undue influence against the respondent, and that the presumption had not been rebutted.

Lord Hailsham LC stated: "But their Lordships are not prepared to accept the view that independent legal advice is the only way in which the presumption can be rebutted; nor are they prepared to affirm that independent legal advice,

when given, does not rebut the presumption, unless it be shown that the advice was taken. It is necessary for the donee to prove that the gift was the result of the free exercise of independent will. The most obvious way to prove this is by establishing that the gift was made after the nature and effect of the transaction had been fully explained to the donor by some independent and qualified person so completely as to satisfy the court that the donor was acting independently of any influence from the donee and with full appreciation of what he was doing…"

Re Craig (deceased) [1971] Ch 95

C, an old man of 84 years whose wife had died, employed Mrs M as secretary/companion. From the beginning she occupied a position of trust, and in addition to running the house she took a confidential part in running C's affairs. From the time of Mrs M's employment and C's death (January 1959–August 1964) he gave her gifts worth £28,000 from his total assets of £40,000.

It was held by the Chancery Division that (1) All the gifts complained of were such as to satisfy the requirements to raise the presumption of undue influence, namely, that they could not be accounted for on the ground of the ordinary motives on which ordinary men act, and secondly, that the relationship between C and Mrs M involved such confidence by C in Mrs M as to place her in a position to exercise undue influence over him. (2) Mrs M failed to discharge the onus on her of establishing that the gifts were only made after 'full, free and informed discussion' so as to rebut the presumption of undue influence. The gifts would, therefore, be set aside.

Re Brocklehurst (deceased) [1978] Ch 14

Brocklehurst was a strong-minded, autocratic and eccentric old man who was used to commanding others and had served in the army in positions of command. He was impulsively generous. When he was in his eighties he lived alone and became friendly with the owner of a local garage. They had a common interest in shooting and B permitted the defendant to shoot rabbits on the estate. B wrote to the defendant saying that he wished to give him the shooting rights over his estate and pressed the defendant to instruct a solicitor to draw up a lease. B executed the lease. After B died, his executors brought an action against the defendant to have the lease set aside on the ground of undue influence. The Court of Appeal upheld the lease.

The Court of Appeal held that the nature of the relationship between the deceased and the defendant was not one of confidence and trust such as would give rise to a presumption of undue influence on the part of the defendant, for the evidence established that the relationship was one of friendship and did not indicate that it was such that the defendant had been under a duty to advise the deceased or had been in a position of dominance over him; on the contrary, it was the deceased who had tended to dominate the defendant.

But even if the relationship had been one that gave rise to a presumption of undue influence, the defendant had rebutted the presumption for in the circumstances the presumption was rebuttable not only by proof that the deceased had been independently advised about the leases but also by proof that the gift of the leases had been the spontaneous and independent act of the deceased.

Royal Bank of Scotland v Etridge (No 2) [1998] 4 All ER 705

See photocopy of Law Report.

TSB Bank v Camfield [1995] 1 All ER 951

Mr Camfield was a partner in a motor business. The partners requested the bank to provide the business with an overdraft facility of £30,000. The bank agreed, provided the partners executed a charge over their houses. Mrs Camfield duly executed the charge but did so under the impression, as the result of an innocent misrepresentation by the husband, that the maximum liability under the charge would be £15,000. That misapprehension was not corrected by the person advising her, even though the effect of the legal charge was to charge her beneficial interest in the house with an unlimited liability to meet the debts of the partnership, in which she had no financial interest. The business failed and the bank commenced proceedings against the Camfields.

The Court of Appeal held that where a wife was induced to execute a charge over the matrimonial home to meet the husband's debts by his innocent misrepresentation that the liability under the charge would not exceed a specified amount, whereas the charge in fact provided security for an unlimited liability, and the creditor was fixed with constructive notice of the husband's misrepresentation because it had failed to take reasonable steps to ensure that the wife understood the charge, the charge would be set aside in its entirety and could not be partially set aside or set aside on terms that it was a valid security for the specified amount for which the wife thought she was at risk. Since, on the evidence, the wife would not have entered into the charge if she had known its true nature and since her ignorance of the true nature of the charge resulted from the bank's failure to take reasonable steps to see that she was properly advised, it followed that the charge would be set aside in its entirety.

Dunbar Bank v Nadeem [1998] 3 All ER 876

See Law Report.

O'Sullivan v Management Agency & Music Ltd [1985] QB 428

The plaintiff sought to set aside for undue influence a number of management, sole agency, recording and publishing agreements and transfers of copyright. The defendant argued that the appropriate remedy, namely restitutio in integrum, was inapplicable in the circumstances because the agreements had all been performed and the parties had irrevocably altered their positions, and that therefore the plaintiff was limited to obtaining damages instead of reconveyance of the copyrights and delivery up of the master tapes.

The Court of Appeal held that the plaintiff was not barred from having the contracts set aside by the fact that restitutio in integrum was impossible because the contracts had been performed. A contract entered into by a person in breach of a fiduciary relationship could be set aside in equity even though it was impossible to place the parties in the precise position in which they had been before, provided the court could achieve what was practically just between the parties by obliging the wrongdoer to give up his profits and advantages, while at the same time compensating him for any work he had actually performed under the contract.

Cheese v Thomas [1994] 1 All ER 35

The 88 year old plaintiff paid £43,000 to the defendant (his 36 year old great-nephew) to finance the purchase of a house in which the plaintiff was to live. The defendant borrowed £40,000 from a building society to make up the purchase price of £83,000 and the house, which it was agreed was to belong to the defendant on the plaintiff's death, was conveyed into the defendant's name and the plaintiff moved in. The plaintiff discovered that the defendant had allowed the mortgage payments to fall into arrears and decided to

withdraw. He claimed repayment of the £43,000. The house was sold for £55,000 and £17,000 was left after redemption. The judge held that the transaction should be set aside because of the defendant's undue influence, and that the loss brought about by the fall in the value of the house should be shared between the parties in proportions of the purchase (ie, 43:40). The defendant appealed against the decision that the transaction was affected by undue influence; the plaintiff appealed against the decision that he should share a proportion of the loss.

The Court of Appeal held that justice required that each party should be returned as near to his original position as was possible and that the defendant should not be required to shoulder the whole of the loss brought about by the fall in the market value. Accordingly, each party should get back a proportionate share of the net proceeds of the house and the judge had correctly decided that the proceeds of sale should be divided between the parties in the proportions of 43:40. The appeals would therefore be dismissed.

Mahoney v Purnell [1996] 3 All ER 61

The plaintiff, M, operated a hotel business in partnership with P, his son-in-law. P wanted to run the hotel on his own. M was reluctant to sell his shares even though his financial position was precarious, but eventually he and P agreed a price of £200,000, calculated on the basis of an assessment of the company's assets and liabilities. The money was to be paid over ten years. The agreements were executed in March 1988. P later sold the hotel in 1989 for £3.275m and M commenced proceedings based on undue influence. Before trial of the action, the company went into liquidation and the payments due to M under the agreements ceased, with some £80,000 outstanding. M's claims of undue influence against P succeeded and the question arose as to the appropriate equitable remedy in circumstances where the parties could not be restored to their former position.

The Court of Appeal held that since the company was in liquidation, the court was entitled in those circumstances to award compensation in equity to M equal to the March 1988 value of what he had surrendered under the agreements, with appropriate credit being given for what he had received under them. M was accordingly entitled to the sum of £202,131 in compensation from P.

Barclays Bank v Caplan (1997) The Times, December 12

It was held in the Chancery Division that at common law, where an instrument contained legally objectionable features which were unenforceable against one party, they might be severed from the rest of the instrument if (1) the unenforceable feature was capable of being removed by the excision of words, without the necessity of adding to or modifying the wording of what remained, and (2) its removal did not alter the character of the instrument or the balance of rights and obligations contained in it.

See Law Report.